Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the matter of	)	
	)	
Implementation of the Cable Television Consumer Protection and Competition Act of 1992	)	MM Docket No. 92-260
	)	
	)	
	)	
Cable Home Wiring	)	

COMMENTS OF
THE WIRELESS CABLE ASSOCIATION INTERNATIONAL, INC.

The Wireless Cable Association International, Inc. ("WCA"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules, hereby submits its initial comments in response to the *Notice of Proposed Rule Making* ("*NPRM*") in this proceeding.

With the *NPRM*, the Commission seeks public comment as to how it can best respond to the mandate of Section 16(d) of the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act"), which directs the Commission "to prescribe rules concerning the disposition, after a subscriber to a cable system terminates service, of any cable installed by the cable operator within the premises of such subscriber."[1] For the reasons set forth below, WCA submits that the public interest will be advanced by: (1) decreeing that all "inside cabling"[2] installed after the effective date of new

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[1]Pub. L. No. 102-385, 102 Stat. 1460 (1992).

[2]For purposes of this proceeding, WCA suggests the use of the term "inside cabling" to apply to all cabling installed for video program distribution within a subscriber's premises. In addition, in multiple dwelling unit environments, "inside cabling" subject to this proceeding should also include all cabling that is routed through common areas, but dedicated solely to the distribution of programming to a single subscriber's unit. For example, in a multi-story apartment building where cabling from each unit on a given floor

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rules belongs to the subscriber; and (2) affording subscribers the absolute right to use, remove, replace, rearrange or maintain any inside cabling installed before the effective date of the new rules, even if that inside cabling is owned by a cable system operator or other multichannel video program distributor under applicable state law.

WCA's members have a vital interest in the outcome of this proceeding. Historically, when a consumer terminated his or her cable television service, the franchised cable system operator left in place the coaxial cable it had installed within the consumer's premises. Although the cable industry will no doubt advance in this proceeding a myriad of other reasons for this course of conduct, the true reason is simple; the salvage value of the coaxial cable pales in comparison to the cost of removing the wiring and restoring the premises to its former condition. As one cable operator candidly conceded in a recent lawsuit involving a homeowner's right to use internal cabling, "removing the cable was more costly than it was worth, and . . . although the wiring could be removed without causing a great deal of damage, some damage could result from removal of the cable

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[2](...continued)
interconnects at that floor with a riser cable running up the building, all cabling from the unit to the riser should be deemed covered by the rules adopted in this proceeding. This approach is consistent with the desire of the House Committee on Energy and Commerce (the "House Committee") that Section 16(d) "is not intended to cover common wiring within the building." H.R. No. 102-628, 102d Cong., 2d Sess., at 119 (1992)[hereinafter cited as "House Report"). At the same time, it provides a readily identifiable point of demarcation between the inside cabling and common cabling that is based on functionality. To draw the demarcation at the wall of the subscriber's unit would frustrate Congress's goal of promoting use by subsequent video programming distributors, since it may well be impossible for the subsequent distributor to interconnect its plant at that wall.

wires."[3]

When a consumer whose home already has inside cabling installed subsequently secures video programming from a wireless cable operator or other alternative service provider, the new service provider generally will utilize the existing interior cabling. Although some cost savings are realized as a result, those savings are minor in most cases and are rarely the motivation for using the existing cabling.[4] More importantly, using the existing cabling permits the installation to be completed with far less disruption to the consumer's home, since it eliminates any need to drill additional holes in exterior and interior walls and fish redundant cable from the exterior wall to the television sets. The result is that the consumer can secure new service more quickly, and with less interference to his or her home.

Recently, however, WCA has observed a disturbing trend; franchised cable system operators are attempting to harass former subscribers who opt for an alternative service provider by precluding consumers from using the coaxial cable left behind in their

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[3]*Metropolitan Cablevision, Inc. v. Cox Cable Cleveland Area*, 1992 Ohio App. LEXIS 356, at 10 (Jan. 30, 1992). *See also, e.g. Continental Cablevision of Michigan v. City of Roseville*, 425 N.W.2d 53, 56 (S. Ct. Mich. 1988) [in case involving ownership of cable house drops, court noted that component parts had little salvage value and that cable operator testified that none had ever been removed]; *State Dept. of Assessments and Taxation v. Metrovision of Prince George's County, Inc.*, 607 A.2d 110 (Ct. Ap. Md. 1992)["Metrovision has never removed, and never intends to remove, a drop cable from the premises of a subscriber"].

[4]In a multiple dwelling unit, the cost savings associated with utilizing the existing wiring can be more substantial, particularly if the inside cabling must be fished through conduit in walls rather than mounted along interior walls or outside the building.

homes. It is not unheard of for cable systems to threaten *criminal* action against homeowners who permit wireless cable operators to utilize inside cabling! Such threats, no matter how groundless, make consumers pause when they are considering switching service providers. No doubt, competition to the coaxial cable monopoly will be hampered if consumers must choose between the Scylla of having redundant wiring installed in their walls or the Charybdis of facing criminal action.

The number of court cases brought by franchised cable operators hoping to frustrate competition by penalizing subscribers to competitive services is growing rapidly.[5] Fortunately for those favoring competition as the most effective check on the market power of cable, the courts are generally siding with subscribers. For example, in one recent case involving a wireless cable operator, the Court of Appeals of Ohio earlier this year affirmed the issuance of an injunction barring a franchised cable system operator from either removing the cabling installed in the home of a former subscriber or prosecuting civil or criminal actions against the wireless cable operator in Cleveland, Ohio for using that cabling.[6]

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[5]*See, e.g.* "CQC wins first battle of mandatory access dispute", *Private Cable*, at 12 (Nov. 1992)[reporting on lawsuit brought by franchised cable operator claiming that wireless cable system is making unauthorized use of internal wiring]; *SMATV News*, at 7 (May 22, 1992)[reporting on action by cable operator charging private cable operator with unauthorized use of equipment]; *SMATV News*, at 8 (April 30, 1991)[reporting on action by franchised cable operator claiming that overbuild system was illegally using drop lines]; *SMATV News*, at 6 (Mar. 31, 1991)[reporting on conversion complaint brought by Hawaiian cable system operator charging apartment association with wrongful use of internal cable].

[6]*See Metropolitan Cablevision, Inc. v. Cox Cable Cleveland Area*, 1992 Ohio App. LEXIS 356 (Jan. 30, 1992).

Clearly, Congress has not been amused by cable's petty efforts to frustrate the emergence of competition in the multichannel video marketplace through harassment of consumers who opt for alternative service providers. In promulgating Section 16(d) of the 1992 Cable Act, Congress intended that the Commission "enable consumers to utilize [existing] wiring with an alternative multichannel video delivery system and avoid any disruption the removal of such wiring may cause."[7] The approach WCA advocates in these comments accomplishes that result in a manner that is fair to consumers and all multichannel video programming distributors.[8]

In developing proposed rules to govern inside cabling, the WCA is cognizant that the Commission will not be writing on a blank slate. Particularly in multiple dwelling unit environments, negotiated arrangements have been entered into that govern the ownership of inside cabling. State courts have already issued numerous decisions regarding the ownership of inside cabling. Ironically, most of those cases arose because the cable operator, in order to secure a favorable tax treatment, argued that the inside cabling is owned by the homeowner once installed. Based on state property and tax laws, some courts have ruled that the homeowner owns the inside cabling,[9] while others have ruled that it is

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[7]H.R. No. 102-628, 102d Cong., 2d Sess. House Report at 118.

[8]Of course, to accommodate the House Committee's concern that rules adopted under Section 16(d) not promote theft of service, the Commission should make clear that no consumer has the right to utilize inside cabling after the termination of service in connection with any theft of service. *See* House Report, at 118.

[9]*State Dept. of Assessments and Taxation v. Metrovision of Prince George's County,* (continued...)

owned by the cable company.[10] While any new rule the Commission adopts will govern on a going forward basis, WCA believes that the Commission should take care to avoid unnecessary intrusion into pre-existing arrangements crafted with state law in mind.

Clearly, simply permitting subscribers to purchase their existing inside cabling upon the termination of service will not yield the immediate pro-consumer and pro-competitive results Congress is seeking. Rather, it will thrust the Commission into a regulatory morass of epic proportions. First, there will inevitably be a rash of disputes between subscribers who are terminating service and their service providers. As noted above under many, if not most, circumstances, the cable operator does not own the inside cabling. Yet, since the state cases addressing the ownership of inside cabling turn on a myriad of factors unique to each case, cable operators intent on thwarting competition will assert ownership, demand payment and force an adjudication as to whether the subscriber owns the inside cabling under state law.[11]

Second, absent rate regulation cable operators will have both the incentive and

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Inc., 607 A.2d 110 (Md. Ct. 1992); *T-V Transmission, Inc., v. County Board of Equalization of Pawnee County, Nebraska, and Pawnee County*, 338 N.W.2d 752 (Neb. 1983); *Metropolitan Cablevision, Inc. v. Cox Cable Cleveland Area*, 1992 Ohio App. LEXIS 356 (Jan. 30, 1992).

[10]*Continental Cablevision of Michigan, Inc. v. City of Roseville*, 425 N.W.2d 53 (Mich. 1988).

[11]Again, it should be noted that the cable operator will claim ownership because many subscribers faced with the prospect of an adjudication will no doubt instead opt to remain with the incumbent.

the ability to render any right to purchase installed inside cabling upon termination of service illusory by charging excessive rates. Therefore, unless the Commission also regulates the terms and conditions of inside cabling sales, consumers will see little benefit from Section 16(d). Yet, for the Commission to undertake the regulation of inside cabling sale prices would be extremely difficult. The appropriate price for any given inside cabling will depend upon such variables as the condition of the cabling, installation cost, depreciation, replacement cost and initial installation fee, all which vary from subscriber to subscriber. Presumably, the Commission will want to avoid the establishment of a regulatory approach towards inside cabling that requires case-by-case adjudication of the reasonableness of pricing decisions. If the Commission focuses its response to Section 16(d) of the 1992 Cable Act on permitting subscribers to purchase their inside cabling upon the termination of service, however, such adjudications will be unavoidable.

To avoid the administrative problems associated with subscriber purchases of inside cabling, WCA believes the Commission should mandate that all inside cabling installed after the effective date of the new rules belongs to the subscriber. Such an approach will be fair to both system operators and subscribers, since it will be clear that the subscriber is purchasing inside cabling at the time of installation, and installation fees will be set accordingly.[12]

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[12]To avoid sharply increased installation fees, system operators should be permitted, if they choose to enter into agreements with new subscribers under which inside cabling will be paid for over a period of time and that such payments will be required even if the subscribers terminates service.

With respect to inside cabling installed prior to the effective date of the new rules, WCA commends to the Commission the suggestion of the Senate Committee on Commerce, Science, and Transportation[13] that the policy governing the post-detariffing use of inside telephone wiring under *Detariffing the Installation and Maintenance of Inside Wiring*, 1 FCC Rcd 1190 (1986), apply to cable. Under that policy, although local exchange carriers were permitted to retain ownership of previously installed inside wiring, the FCC assured consumers the right to utilize that wiring at no charge and permitted consumers to remove, replace, rearrange or maintain that wiring, regardless of ownership.[14] This approach permitted the Commission to avoid a series of thorny problems associated with the sale of inside telephone wiring to consumers, while still accomplishing the Commission's underlying policy goals. Adoption of a similar approach with regard to inside cabling will permit cable operators and the multichannel video program distributors to continue their ongoing depreciation of installed inside cables, while affording consumers what they really want -- the right to have alternative service providers utilize existing wiring.

Finally, the concerns expressed in the *NPRM* regarding signal leakage should not restrain the Commission from adopting WCA's proposed resolution.[15] Simply put, regardless of who may be vested with title to inside cabling, the responsibility for avoiding

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[13]S. Rep. No. 102-92, 102d Cong., 1st Sess. at 23 (1991).

[14]1 FCC Rcd at 1195.

[15]*See NPRM*, at ¶ 6.

signal leakage should reside with the service provider. That is precisely how responsibility for signal leakage rests today. For example, although subscribers to many cable systems today own their inside cabling under state law, it is "the operator of each cable television system" who bears the responsibility for assuring that the inside cabling remain free from excessive leakage under Section 76.601(k) of the Commission's Rules. Similarly, although cable system terminal equipment (such as subscriber terminals, input selector switches and other accessories) is frequently owned by the subscriber, Section 76.617 of the Commission's Rules imposes on the operator of the cable system responsibility for detecting and eliminating impermissible signal leakage. As the Commission correctly found in promulgating Section 76.617:

> we recognize that the typical subscriber does not have the technical expertise or equipment to detect signal leakage. We are also cognizant of the importance to life and safety of preventing signal leakage on the aeronautical frequencies and that, in general, cable systems are the only parties that are qualified and equipped to detect signal leaks in their local area. On this basis, cable systems will be responsible for detecting and eliminating signal leakage resulting from use terminal devices where that leakage would cause interference outside the subscriber's premises and/or would cause the cable system to exceed the Part 76 standards.[16]

While WCA believes that the cable system operator should bear responsibility for signal leakage caused by any inside wiring it is utilizing, the Commission should minimize the potential burden in much the same way it has in Section 76.617 of the Rules;

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[16]*Amendment of Parts 15 and 76 Relating to Terminal Devices Connected to Cable Television Systems*, 2 FCC Rcd 3304, 3308 (1987).

the service provider should only be required to discontinue service to the offending subscriber until the leakage is cured.[17] While WCA presumes that most cable system operators will choose to correct the problem for the consumer, either for a fee or as a good will gesture,[18] the requirement WCA advocates should not prove unduly burdensome in any event.

WHEREFORE, for the foregoing reasons, WCA urges the Commission to adopt rules implementing Section 16(d) that: (1) decree that all inside cabling installed after the effective date of new rules belongs to the subscriber; and (2) afford subscribers the

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[17] *See id. See also* 47 C.F.R. § 76.617 (1992).

[18] *See Id.*, at 3312 n. 20 ("Of course, cable operators will not be restricted in any way from offering to provide other corrective services, such as properly connecting equipment or repairing it, or additional equipment that may be necessary to restore the subscriber's service consistent with our rules.")

absolute right to use, remove, replace, rearrange or maintain any inside cabling installed before the effective date of new rules, even if that cabling is owned by the cable operator or other multichannel video program distributor under state law.

Respectfully submitted,

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